

# **EXHIBIT 4**

## **Skillz' Terms of Service (updated Oct. 10, 2019)**

# **EXHIBIT 4**



# USER TERMS AND CONDITIONS

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## USER FAQ

*Updated {October 10th. 2019}*

- **Who is eligible to compete in Skillz games?** Anyone over age 18 with a mobile phone can play.
- **What makes Skillz legal?** All games with cash-enabled competitions have undergone patented tests to ensure that they are as fair and skill-based as possible.
- **Where are Skillz cash tournaments available?** Skillz uses GPS to locate your mobile device to confirm you are located where cash tournaments are permitted. Cash tournaments currently are disabled in certain countries and

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some U.S. states (AZ, AR, CT, DE, FL, LA, MT, SC, SD, and TN) to comply with local regulations.

- **What is the difference between skill-based gaming and gambling?** Players' abilities determine the outcome of a skill-based competition. Gambling involves significant elements of chance and increased performance is often uncorrelated with additional play.
- **What happens if players try to play a Skillz game where cash competitions are not enabled?** For states and countries where cash competitions are not permitted, generally, players may still compete in virtual currency tournaments.
- **How do I know my opponent is a fair match?** Skillz's algorithm matches players of similar ability to ensure level play in tournaments.
- **How do I know that each game is fair?** Skillz technology and teams ensure that each tournament provides the same circumstances to each player. Software and fraud prevention teams also monitor gameplay to prevent cheating and ensure competitions are fair.

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*Updated {October 10th. 2019}*

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Welcome to Skillz! We hope you'll enjoy being a part of our community by participating in online gaming challenges, competitions and tournaments offered by those certain third-party developer partners who have integrated their games with Skillz's SDK (collectively, "Competitions") and using other applications, tools and services offered by third-party developer partners who have integrated Skillz's SDK into their Competitions and that may be provided from time to time (together with Competitions, the "Services"). YOU ACKNOWLEDGE THAT YOUR ABILITY TO PARTICIPATE IN COMPETITIONS AND USE THE SERVICES OFFERED BY THIRD PARTY DEVELOPERS DOES NOT ESTABLISH SKILLZ AS A PROVIDER OF COMPETITIONS OR THE SERVICES.

BY REGISTERING FOR AN ACCOUNT WITH US (your "Account"), USING THE SERVICES IN ANY WAY, CLICKING "I ACCEPT" BELOW, DOWNLOADING ANY APPLICATION INTEGRATED WITH SKILLZ'S SDK (as further defined in Section 2.2 below, "Software"), OR REGISTERING FOR OR PARTICIPATING IN ANY COMPETITIONS, YOU: (A) ACKNOWLEDGE THAT YOU HAVE READ THESE TERMS AND CONDITIONS OF SERVICE AND ALL OBLIGATIONS AND RULES THAT MAY BE INCLUDED WITHIN EACH COMPETITION IN WHICH YOU PARTICIPATE ("Rules") (these Terms and Conditions of Service, the terms of any policy incorporated herein, and the Rules are collectively referred to as the "Terms") IN THEIR ENTIRETY; (B) AGREE TO BE BOUND BY THE TERMS; AND (C) ARE AUTHORIZED AND ABLE TO ACCEPT THESE TERMS. If you don't wish to be bound by the Terms, do not click "I accept" and do not register with Skillz ("Skillz", "we" or

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“us”) and do not use the Services. Declining to accept these Terms means you will be unable to participate in Competitions or use your Skillz account.

## **1. GENERAL TERMS**

**1.1. ARBITRATION.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ANY CLAIM, DISPUTE OR CONTROVERSY OF WHATEVER NATURE (“CLAIM”) ARISING OUT OF OR RELATING TO THESE TERMS AND/OR OUR SOFTWARE OR SERVICES MUST BE RESOLVED BY FINAL AND BINDING ARBITRATION IN ACCORDANCE WITH THE PROCESS DESCRIBED IN SECTION 14 BELOW. PLEASE READ SECTION 14 CAREFULLY. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, YOU ARE GIVING UP THE RIGHT TO LITIGATE (OR PARTICIPATE IN AS A PARTY OR CLASS MEMBER) ALL DISPUTES IN COURT BEFORE A JUDGE OR JURY.

**1.2. Changes to the Terms.** We may amend, change, modify or revise the Terms at any time, and we may post a notice on our website at

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("Website") of any material changes, and you can see when these Terms were last revised by referring to the "Updated" legend above. Your continued participation in Competitions and/or use of Software or Services means you accept any new or modified Terms. You are responsible for reviewing the Terms for any changes, so please check back here from time to time.

**1.3. Eligibility.** You may not modify these Terms except in writing signed by both you and Skillz. For purposes of these Terms, "writing" does not mean an email nor an electronic/facsimile signature.

**1.3.1. United States (U.S.).** To be eligible to register an Account, to participate in any Competition or receive Services, and/or to download Software, you must: (a) be a natural person who is at least 18 years of age or older, and who is personally assigned to the email address submitted during your Account registration; (b) have the power to enter into a contract with Skillz; (c) be physically located within the U.S. when accessing your Account and participating in Competitions; (d) be physically located within a U.S. state in which participation in the Competition you select is unrestricted by that state's laws; and (e) at all times abide by these Terms. If any one of these requirements is not met at any time, we, as agent for our developer partners, may suspend or close your Account with or without notice.

**1.3.2. Non-U.S.** To be eligible to register an Account, to participate in any Competition or receive Services, and/or to download Software, you must: (a) be a natural person who is at least 18 years of age or older, and who is personally assigned to the email address submitted during your Account registration; (b) have the power to enter into a contract with Skillz; (c) be

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physically located in a jurisdiction in which participation in the Competition you select is permitted and unrestricted by that state or country's laws; and (d) at all times abide by these Terms. If any one of these requirements is not met at any time, we, on behalf of our developer partners, may suspend or close your Account with or without notice.

**1.4. Registration.** When you create an Account, you will be asked for a legitimate email address that you control and to create a password. After registration, you will be given the opportunity to create a username or accept a username given by the Services. The password and username are needed to participate in the Services. As a registered user, you can update your account settings, including your email address, by logging into your Skillz Account inside any Skillz-enabled game and clicking "Account Settings". Also, if you forget either your password or username, you can visit the Website or email us for help. Please keep your username and password secret because you are responsible for all activity in your Account. Although we may offer a feature that allows you to "save" or "remember" your password, this feature makes it possible for third parties to access your Account, so please use that feature prudently because such use is at your own risk. We may, in our sole discretion, reject, change, suspend and/or terminate your username.

**1.5. Your Account.** As the holder of your Account, you are solely responsible for complying with these Terms, and only you are entitled to all benefits accruing thereto. You may not allow any other person to (i) access your Account; (ii) access Services or Software through your Account; or (iii) accept or use prizes, winnings and other representative of value (including without

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limitation digital trophies, virtual currency or virtual goods) (collectively “Winnings”). Neither your Account nor Winnings nor any Digital Assets (defined in Section 10.3) are transferable to any other person or account. You must immediately notify us of any unauthorized use of your password or identification or any other breach or threatened breach of our security or the security of your Account in any Skillz-enabled game.

**1.6. Personal Location Data:** As a part of this service, on behalf of our developer partners, we collect location information from your device. If you would like to opt out of having this information collected, you can disable location access to any game with the Skillz SDK through the Settings menu on your mobile device.

**1.7. Use of Information Collected:** By upgrading an account and providing an email address, users authorize Skillz to provide them with important announcements, relevant promotions, and other related communications relating to the Service, Software and Competitions. Users will always have the opportunity to opt out of these communications at any time.

**1.8 Employee Policy:** Skillz employees may use the Services and/or Software for the purpose of testing the user experience, but may not withdraw money. Skillz directors, contractors, affiliates, or partners may use the Website, Services and/or Software without such limitation, but only if they do not have any access to non-public information relating to the Services and/or Software that would lead to any advantage in their play using the Services and/or Software.

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## 2. SERVICES AND SOFTWARE

**2.1. The Services.** On behalf of our developer partners, we may, with or without notice to you: (1) modify, suspend or terminate your access to the Website, Services and/or Software for any reason without liability; and (2) interrupt the operation of the Website, Services and/or Software as necessary to perform maintenance, error correction, or other work. As agent for our developer partners, we may suspend and/or close the account of any user who violates, or whom we reasonably believe may be in violation of or will violate, these Terms, at any time without notice and without liability. Also, and without limiting our other rights or remedies, if we believe you have violated these Terms or if you have violated these Terms, as agent for our developer partners, we may determine that your Winnings, if any, will be forfeited, disgorged or recouped.

**2.2. Software.** If you wish to participate in Competitions or receive Services, you may be required to first download certain mobile applications from our third-party developer partners which have integrated Skillz's SDK (together with the content included therein, any associated documentation, and any application program interfaces, license keys, and patches, updates, upgrades, improvements, enhancements, fixes and revised versions of any of the foregoing, is collectively "Software"). If you do not download the Software, you will not be able to participate in Competitions or receive relevant Services. Whether you download the Software directly or from a third party, such as via an app store, your use of the Software is subject to these Terms. We license the Software to you under Section 10.2.

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**2.3. Remote Access and Updates.** We and/or our developer partners choose to offer technical support for Software from time to time in our discretion. Such technical support may require that we or our developer partners remotely access your device on which the Software is installed (“Device”). Also, if and when our developer partners update the Software or deploy patches, updates, and modifications to the Skillz SDK integrated into the Software, as applicable, we may do so through remote access of your Device without your knowledge. You hereby consent to these activities. You acknowledge that if we or our developer partners cannot remotely access your Device, then the Software may no longer work, and this may prevent you from participating in Competitions or otherwise receiving Services. We and/or our developer partners’ access to your Device will be limited solely to (i) providing support (ii) updating the Software or (iii) determining your location for skill-gaming regulatory purposes only, and is governed by the terms of our Privacy Policy.

**2.4. Beta Releases.** For any Service that is identified by us or our developer partners as a “beta” version (“Beta Service”), you acknowledge and agree that a Beta Service may contain more or fewer features than the final release of the Service. We and our developer partners reserve rights not to release a final release of a Beta Service or to alter any such Beta Services’ features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics. Beta Services may not be suitable for production use and may contain errors affecting proper operation and functionality.

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**2.5. Third Party Sites.** You may be able to access third-party websites or services via the Software, Services or Website. We are not responsible for third-party websites, services, or content available through those third-party services. You are solely responsible for your dealings with third-parties (including advertisers and game developers). Your use of third-party software, websites or services may be subject to that third-party's terms and conditions.

## **3. COMPLIANCE WITH LAWS**

**3.1. Prohibited US States/Countries.** You acknowledge that various rules, regulations and laws addressing sweepstakes, contests, and tournaments with entry fees and/or prizes govern your participation in Competitions ("Gaming Laws"), and that Gaming Laws are set up by each individual US state, country, territory, or jurisdiction. Therefore, the Software DOES NOT permit Cash Competitions (as defined in section 8.3) to be offered to users participating in Competitions in any state in which such Competition violates its Gaming Laws ("Prohibited Jurisdiction"), and if you are located in any Prohibited Jurisdiction then you may not participate in Cash Competitions. In the United States, Prohibited Jurisdictions, as of the "Updated" date above, include: Arizona, Arkansas, Connecticut, Delaware, Florida, Louisiana, Montana, South Carolina, South Dakota, and Tennessee. For card games, Prohibited Jurisdictions include Maine and Indiana. It is your responsibility to determine whether the state, country, territory or jurisdiction in which you are located is a Prohibited Jurisdiction. Together with our developer

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partners, we reserve the right (but have no obligation) to monitor the location from which you access Services, and on behalf of our developer partners, we may block access from any Prohibited Jurisdiction. Each time you log in to participate in a Cash Competition, you must accurately confirm the location from which you are playing.

**3.2. Additional Laws.** In addition to Gaming Laws, you are also subject to all municipal, state and federal laws, rules and regulations of the city, state and country in which you reside and from which you access and use Services, including without limitation U.S. export laws (together with Gaming Laws, the “Applicable Laws”). You are solely responsible for your compliance with all Applicable Laws. Access to Competitions may not be legal for some or all residents of, or persons present in, certain jurisdictions. SERVICES AND COMPETITIONS ARE VOID WHERE PROHIBITED OR RESTRICTED BY APPLICABLE LAWS. Your participation in Competitions is at your own risk, and you agree not to hold us responsible or liable if Applicable Laws restrict or prohibit your access or participation.

**3.3. LEGAL DISCLAIMERS.** WE MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE LAWFULNESS OF YOUR PARTICIPATING IN ANY COMPETITION OFFERED BY OUR DEVELOPER PARTNERS OR USE OF SERVICES, NOR SHALL ANY PERSON AFFILIATED, OR CLAIMING AFFILIATION, WITH US HAVE AUTHORITY TO MAKE ANY SUCH REPRESENTATIONS OR WARRANTIES.

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## **4. YOUR REPRESENTATIONS AND WARRANTIES TO US**

You represent and warrant to us that (1) you have the right, authority, and capacity to agree to these Terms, to register for an Account, and to participate in those Competitions for which you register; and (2) you will comply with these Terms when participating in Competitions, receiving Services, and/or using Software; and (3) all information you supply to us or our developer partners is complete, accurate and current (and knowingly submitting incomplete or inaccurate information, or failing to update and maintain current, complete and accurate information, may result, without limitation, in immediate termination of your Account and forfeiture of Winnings).

## **5. YOUR INDEMNIFICATION OF US**

You will, at your own cost and expense, indemnify and hold us and our directors, officers, employees and agents harmless from and against any and all claims, disputes, liabilities, judgments, settlements, actions, debts or rights of action, losses of whatever kind, and all costs and fees, including reasonable legal and attorneys' fees, arising out of or relating to (i) your breach of these Terms; (ii) any use of your Account, the Website, the Software and the Services by any person including yourself; (iii) your violation of Applicable Laws; and/or (iv) your negligence or misconduct; and, if we instruct you in writing, you will, at your cost and expense, defend us from any of the foregoing using counsel reasonably acceptable to us.

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## 6. PRIVACY

**6.1. Privacy Policy.** We are committed to your privacy, and our Privacy Policy, the terms of which are incorporated into these Terms as if set forth in their entirety, explains the policies put in place and used by us to protect your privacy as you visit the Website, participate in Competitions, download and use the Software and receive Services, and its terms are made a part of these Terms by this reference. We receive, store and use all information that you submit to the Website and all information you submit in registering for and participating in Services, in accordance with the Privacy Policy, so please read it carefully. We also collect anonymous aggregated and/or statistical data reflecting your use of the Website and Services and may use such data for tracking, reporting and other activities in connection with our business, also all in accordance with the Privacy Policy. We will not intentionally disclose any personally identifying information about you (including information submitted in creating an Account, your social security number, your email address, phone number, or passport, information obtained by the Website from cookies, and information regarding your IP address) to third parties without your consent except (1) where expressly specified in these Terms, (2) where expressly specified in the Privacy Policy, and/or (3) where we, in good faith, believe such disclosure is necessary to comply with Applicable Laws, to enforce these Terms against you, or to help prevent a loss of life or physical injury or crime.

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**6.2. Communications with You.** As also detailed in the Privacy Policy, we may use emails, text messages, and push notifications to notify you when you win our developer partners' Competitions, when a Competition you have entered has completed, and to let you know of special promotions, events and policy changes. We may also communicate with you via email, text message, push notification or chat for any other purpose relating to Services or Software. We or our representatives may monitor all communications made by or received by you while using the Website and Services. If you do not wish to receive these communications from us, you may opt out by emailing support@skillz.com, but you acknowledge that opting out may result in your inability to participate in our developer partners' Competitions or receive Services.

**6.3. Device Information.** Using the Software and Services requires an Internet connection to our servers, and we (on behalf of our developer partners) or our developer partners may need to collect certain information from you and your Internet-enabled device ("Device") in order to make the Software and Services available to you, such as hardware system profile data, internet connection data and any other data related to the operation of the Service from any Device that logs onto the Service using your Account. We will use this information in accordance with the Privacy Policy.

**6.4. Warning.** Please take care in sending us sensitive information because third parties can unlawfully intercept or access transmissions or private communications between you and us, and you acknowledge that internet transmissions are

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never completely private or secure. For your safety, you should never reveal any sensitive personal information in any Skillz-enabled public forums, message boards or chat features.

**6.5. Promotional Activities.** By registering for an Account, you allow us and/or our developer partners to publicly display your username and tournament records, and to use this information for any purpose. By using the Services, you allow us and our developer partners to print, publish, broadcast and use, worldwide, in any media and at any time, your name, picture, voice, likeness, and/or any biographical information that you submit to us or our developer partners (“Biographical Information”) for promotional, marketing or related business purposes, without compensation to you. However, we will never sell your Biographical Information without your prior written consent, and our use of your personally identifiable information is always governed by our Privacy Policy.

**6.6. Gameplay Dialogue.** On behalf of our developer partners, we may use third party websites and technologies to record or stream gameplay or chat dialogue occurring through the Services, including your own dialogue (“Recordings”). We use Recordings to verify compliance with these Terms and as part of marketing and promotion of the Services. Please do not submit personally identifiable information in gameplay dialogue—this information is available for anyone to see and use. You may record and distribute your own recordings of gameplay dialogue for non-commercial purposes (i.e., you may not record or distribute Recordings for compensation) so long as your

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recording and distribution: (a) do not include other products or services that are competitive with the Services, and (b) comply with these Terms.

**6.7. Children.** The Services will not knowingly accept personal information from anyone under 18 years old. If you believe that a child under 18 has gained access to the Services, please contact us at support@skillz.com. On behalf of ourselves and our developer partners, we have taken commercially reasonable steps to restrict use of Services to those who are at least 18 years old. As agent for our developer partners, we do not sell products or services for purchase by minors.

## 7. ACCEPTABLE USE POLICY

**7.1. Rules of Conduct.** You are personally responsible for your use of Services and Software, and while using Services and Software you must conduct yourself in a lawful and respectful manner in accordance with our rules of conduct below. We may temporarily or permanently ban users who violate these rules, or who abuse email communications, support communications, or the community purpose of any message board areas, as determined by us and our developer partners, in our sole discretion. We and our developer partners reserve the right to disable a player's ability to upload profile photos or edit their username at any time.

- Profanity, obscenities, or the use of **\*\*asterisks\*\*** or other "masking" characters to disguise such words, is not permitted.

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- You may not use or upload obscene, lewd, slanderous, pornographic, abusive, violent, insulting, indecent, threatening and harassing language of any kind, as determined by us in our sole discretion.
- Service usernames will be displayed as 'Your Name'; impersonating other players is not allowed.
- Do not share personal information (your name, phone number, home address, and password) with other users.
- Do not transmit or upload any copyrighted or trademarked materials in messages or postings.
- Information disclosed in chat rooms, message boards, gameplay dialogue or via eMessages is revealed to the public, and neither we, nor our developer partners, is responsible for information you choose to disclose to others.
- Advanced fonts, java, tables, html or other programming codes or commands are not allowed in messages.
- You may not attempt to participate in any Service by means of automatic, macro, programmed or similar methods.
- You may not commit fraud with regard to any Service.
- You may not attempt to impersonate or deceive another user for the purposes of illicitly obtaining cards, passwords, account information etc. (aka "scamming").

You may not make any commercial use of any of the information provided on the Website or through the Services nor make any use of the Website or Services for the benefit of a business.

**7.2. Your Content.** You acknowledge that the Service is a passive conduit for user content and that: (i) neither we, nor our developer partners, pre-screen user content or communications

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or (ii) control, verify or pay for any user content or communications. We do not endorse, and specifically disclaim any responsibility or liability for, any publicly posted content. In addition, as agent for our developer partners, we may terminate your access to any public forums at any time, without notice, for any reason whatsoever, and/or delete, move or edit content submitted publicly, in whole or in part. You may only upload, send, and receive messages and material that is related to the subject matter of the public forums, complies with Applicable Laws, and conforms to any additional terms of service posted in the public forums. You may not upload to, distribute, or otherwise publish any content, information, or other material that (a) violates or infringes the copyrights, patents, trademarks, service marks, trade secrets, or other proprietary rights of any person; (b) is libelous, threatening, defamatory, obscene, indecent, pornographic, or could give rise to any civil or criminal liability under U.S. or international law; or (c) includes any bugs, viruses, worms, trap doors, Trojan horses or other harmful code or properties. Submissions or opinions expressed by users are that of the individual expressing such submission or opinion only. Subject to the foregoing, as agent for our developer partners, we may edit, refuse to post, or to remove any information or materials submitted, in our discretion. You may not use a false email address, pretend to be someone other than yourself or otherwise mislead us or third parties as to the origin of your submissions or content.

**7.3. Cheating, Fraud, and Abuse.** In accessing or participating in Services or using the Software, you represent and warrant to us and our developer partners that you will not engage in any activity that interrupts or attempts to interrupt the operation of

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the Services or Software. Anyone who engages in, participates in or displays behavior that may be interpreted, in the discretion of us and our developer partners only, as unfair methods in participating in Services or using the Software, including but not limited to, the opening and/or use of multiple accounts, the use of unauthorized or altered software or hardware to assist play (e.g., bots, bot nets, and collusion with bots), intentionally poor play in certain games to achieve competitive advantage, collusion with other players (e.g. intentionally losing rematches in Cash Competitions), deliberate transfer of money between accounts (e.g., “money laundering”), harassment of other participants, posting objectionable material, breach of these Terms, breach of security of your Account, or any other act (whether through the use of automated technology or otherwise) that unfairly alters your chance of winning or constitutes the commission of fraud (collectively, “Abuse”), you will be subject to immediate sanction (as determined by us and our developer partners only), which may include, without limitation: (1) immediate termination of your Account and blocking of your access to the Website and Services; (2) any Winnings that you may otherwise have been entitled to receive shall be void and forfeited; and (3) any Winnings received by you shall be subject to disgorgement and/or recoupment. In addition to the foregoing, as agent for our developer partners, we reserve the right to disclose or report any money laundering similar illegal activity to law enforcement and regulatory authorities. Without limiting our other available remedies, we, solely, or in conjunction with our developer partners, may institute or seek any injunctive relief, civil and/or criminal proceedings against you and/or any of your co-conspirators arising out of or related to your commission of

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Abuse, including without limitation recovering all of our and/or our developer partners' fees and expenses (including reasonable attorneys' fees) in connection with such efforts.

**7.4. Hacking, Tampering, or Unauthorized Access.** Any attempt to gain unauthorized access to systems or any other user's account, interfere with procedures or performance of Services, Software or the Website or deliberately damage or undermine the Services or Software is subject to civil and/or criminal prosecution and will result in immediate termination of your Account and forfeiture of your Winnings. You acknowledge that we are not responsible for any damage, loss or injury resulting from hacking, tampering or other unauthorized access or use of the Services or your Account.

**7.5. Restrictions.** Any use, reproduction or redistribution of the Service, Software, or related products or services (including without limitation, Digital Assets) not expressly authorized by these Terms is expressly prohibited. You may not engage in, or assist others to engage in, conduct that would damage or impair our property including, without limitation: (a) copying, distributing, transmitting, displaying, performing, framing, linking, hosting, caching, reproducing, publishing, licensing, or creating derivative works from any information, software, products or services obtained from us; (b) providing unauthorized means through which others may use Services such as through server emulators; (c) taking actions that impose an unreasonable or disproportionately large load on network infrastructure, or that could damage, disable, overburden or impair our Websites or Services; (d) interfering with any other party's use and enjoyment

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of Services and/or Software (including cheating) or the Website;  
and/or (e) attempting to gain unauthorized access to third party  
accounts, the Service or Software.

## **8. WINNINGS, ACCOUNT FUNDS, AND PAYMENTS**

**8.1. Fees.** Fees and payments for Services that you pay to participate in Competitions (“Fees”) and billing procedures are detailed in the billing application. If Fees are charged to your Account, you agree to pay those Fees. All Fees are stated in U.S. Dollars, must be prepaid and are non-refundable. You are fully responsible and liable for all charges, deposits and withdrawals made under your Account, including any unauthorized charges, deposits or withdrawals. The price of Services may change at any time, but no price change will affect your past purchases.

**8.2. Billing.** As agent for our developer partners, we may change Fees and billing procedures by updating the billing application with or without notice to you. By providing a payment method, you (i) represent that you are authorized to use the payment method that you provided and that any payment information you provide is true and accurate; (ii) authorize us, as agent for our developer partners, to charge you for the Services using your payment method; and (iii) authorize us, as agent for our developer partners, to charge you for any paid feature of the Services that you choose to sign up for. As agent for our developer partners, we may bill you (a) in advance; (b) at the time of purchase; or (c) shortly after purchase, in our sole discretion. ^  
You must tell us within 120 days after an error first appears on

your bill for an investigation of the charge to occur promptly. After 120 days from the first appearance of the error, neither we nor our developer partners (i) will be liable for any losses resulting from the error and (ii) will be required to correct the error or provide a refund. If we or our developer partners identifies a billing error, it will be corrected within 90 days. You must pay for all reasonable costs we, as agent for our developer partners, incur to collect any past due amounts, including without limitation reasonable attorneys' fees and other legal fees and costs.

**8.3. Cash Deposits.** If you play games integrated in a Competition without depositing U.S. Dollars into your Account for that Competition, then you are a "Non-Cash Player" with respect to such Competition. However, if you play in a Competition that requires an entry paid in U.S. Dollars ("Cash Competition"), then you are a "Cash Player", and if you establish a positive Account balance for entry fees for Cash Competitions, then you must submit and maintain at all times the following current and correct information: your full name, your permanent residential address, your phone number and your credit card or other payment information. Participating in Cash Competitions may require establishing a positive Account balance in any amount we or our developer partners determine. If you are a Cash Player, by submitting this information, you consent to allowing us and our developer partners to share your personal and payment information in confidence with third party service providers for the purposes of validating your identity and assessing the transaction risk associated with accepting your selected method of payment, and for any other purpose as detailed in our Privacy Policy. If you make a credit card deposit, an authorization

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request will be submitted to the issuing bank of at least Ten U.S. Dollars (US\$10.00) to your credit limit, even if the actual amount charged may be lower. When you withdraw funds from your account, you may be required to submit your social security number or other identifying information. Failure to provide your social security number or other requested identifying information at that time may result in inability to process your withdrawal for any winnings.

**8.4. Bonus Funds.** If you are a Cash Player then you may be granted bonus funds and/or credits ("Bonus Funds"). Bonus Funds can be used to enter Cash Competitions, but cannot be withdrawn or used for any other Service. When you enter a Cash Competition, US\$0.01 (one U.S. cent) of Bonus Funds will be used to enter the competition for every US\$0.10 (ten U.S. cents) spent on the Cash Competition entry fee. Notwithstanding the foregoing, additional Bonus Funds will be used to enter Cash Competitions if Bonus Funds are the only currency available in your account. When you win a Cash Competition, any Bonus Funds that you have used to pay the entry fee will be returned to you and any additional winnings beyond your entry fee will be paid in U.S. Dollars. If you initiate a withdrawal of funds from your Account, you will forfeit all Bonus Funds currently in your Account. If you do not enter a Cash Competition within a continuous 60 day time period, all Bonus Funds in your account will be forfeited.

**8.5. Withdrawals.** If you are a Cash Player, you may request a withdrawal of funds from your available Account balance at any time. Digital Assets and Bonus Funds cannot be withdrawn. Processing of requested funds is made by check or by refund to

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the payment method used to make your deposit and may take up to ninety (90) days; provided, however, that we, as agent for our developer partners, may freeze your Account and/or delay a request for withdrawal of funds pending completion of any investigation of reported or suspected Abuse, verification of eligibility or to comply with Applicable Laws. A check request processing fee of up to \$2.00 for any withdrawal of less than \$10.00 may be assessed.

**8.6. Closing Accounts; Forfeiture of Funds.** If you close your Account, funds in your Account will be returned subject to the terms of Section 8.5. If your Account is unilaterally closed or terminated for cause as allowed in these Terms, funds in your Account may be forfeited and not returned to you. If your funds are forfeited by you in accordance with this Section or Sections 2.1, 4, 7.3, 7.4, 7.5 or 8.9 hereof, these funds may be used to defray the costs of administration and enforcement of these Terms, allocated or disbursed such amounts to other Services or donated these funds.

**8.7. Account Monthly Maintenance Fee.** If your Account is inactive (i.e. you have not entered at least one (1) tournament) for six (6) consecutive months or more, a maintenance fee of \$2.00 per month may be charged (the "Monthly Maintenance Fee"). After five or more months of inactivity you will be notified by email that if your Account remains inactive for one more month, the Monthly Maintenance Fee will be deducted from your Account each consecutive month after that that it remains inactive. The Monthly Maintenance Fee will not be deducted from your Account if there are no funds in your Account.

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However, if your Account has no funds and has been inactive for twelve or more consecutive months, your Account may be closed.

**8.8. Refund Policy.** Unless otherwise required by law, no refunds are given.

**8.9. Winnings.** If you are eligible to receive Winnings, in our capacity as agent for our developer partners, we may require that you provide proof that you are, or were at the time of your participation in the subject Competition, eligible to participate in accordance with these Terms and that your participation was in accordance with these Terms. If you do not provide such proof to our or our developer partners' reasonable satisfaction, then you will not receive the relevant Winnings. If you receive a payment in error, we, as agent for our developer partners, may reverse or require return of the payment. You agree to cooperate with our efforts to do this, in our capacity as agent for our developer partners. We may also reduce payment to you without notice to adjust for any previous overpayment.

**8.10. Credit Card/PayPal Use.** When you pay for any charges by credit card, you represent to us that you are the authorized user of such credit card. You must promptly notify us of any changes to your credit card account number, its expiration date and/or your billing address, or if your credit card expires or is canceled for any reason. We are not liable for any loss caused by any unauthorized use of your credit card or other method of payment by a third party (such as PayPal) in connection with the Services. Any attempt to defraud through the use of credit cards or other methods of payment, regardless of the outcome, or any failure by you to honor legitimate charges or requests for payment, will

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result in immediate termination of your Account, forfeiture of Winnings, and pursuit of civil litigation and/or criminal prosecution.

**8.11. Taxes.** If you are a U.S. resident, we, as agent for our developer partners, may send you an IRS Form W-9 and 1099-MISC or other appropriate form if your Winnings total \$600 or more in any given calendar year. Depending on the state in which you reside, we may also send you additional federal or state tax forms. Without limiting the foregoing, as agent for our developer partners, we may withhold from your existing Account balance and/or from future Winnings any amount required to be withheld by Applicable Laws, including amounts due in connection with your failure to complete relevant tax documentation, but you remain solely responsible for paying all federal, state and other taxes in accordance with all Applicable Laws.

## 9. COPYRIGHT COMPLAINTS

The Digital Millennium Copyright Act (DMCA) provides copyright owners who believe that their rights under the United States copyright law have been infringed by acts of third parties over the Internet with ways to protect their rights. If you believe that your copyrighted work has been copied without your authorization and is available in the Services in a way that may constitute copyright infringement, you can provide notice of your claim to the designated agent listed below. For your notice to be effective, it must include the following information:

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1. A physical or electronic signature of a person authorized to act on behalf of the owner of the intellectual property right that is allegedly infringed;
2. A description of the copyrighted work that you claim has been infringed upon;
3. A description of where the material that you claim is infringing is located in this game; Information reasonably sufficient to permit us to contact the complaining party, such as address, telephone number, and, if available, an e-mail address at which the complaining party can be contacted;
4. A statement by you that you have a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
5. A statement that the information in the notification is accurate and, under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of the exclusive right that is allegedly infringed.

Skillz' Designated Agent is: Skillz, Inc. Attn: Legal Department,  
P.O. Box 445, San Francisco, CA 94104; support@skillz.com.

## 10. PROPRIETARY RIGHTS

**10.1. Your Content.** Subject to these Terms, you grant to us a worldwide, perpetual, unrestricted, royalty-free license to use, copy, modify, distribute, publish, perform, transmit and display any and all communications, materials, content and information that you submit to us or our developer partners, whether directly

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or through the Website, Services or Software (“Content”), and waive any moral rights you may have in Content. Subject to these Terms, any communication or material you transmit to us, including any data, questions, comments, suggestions or the like, will be treated by us and our developer partners as non-confidential and non-proprietary. Subject to these Terms, we and our developer partners may use Content for any purpose, without any compensation, accounting or other liability or obligation to you. If you use or share Content in a way that infringes others’ copyrights, trademarks, other intellectual property rights or privacy rights, you are breaching these Terms. You represent and warrant to us and our developer partners that for the duration of these Terms you have (and will have) all the rights necessary for the Content you upload or share on the services and that the use of the Content, as contemplated in this Section will not violate any Applicable Laws. If your Account is cancelled or terminated, we and our developer partners may permanently delete your Content from our servers and we have no obligation to return Content to you.

**10.2. Software License.** Subject to these Terms, we grant to you a personal, nonexclusive, limited, non-transferable, non-assignable, non-sublicensable, limited license to install and run the Software, in object code format only, on a Device owned or controlled by you, solely for the purpose of accessing and using the Services in accordance with these Terms, and solely for so long as your Account is open. You acknowledge that you are receiving licensed rights only. You may not network the Software among devices. You may not directly or indirectly, or authorize any person or entity to: (i) reverse engineer, decompile, disassemble, re-engineer or otherwise create or attempt to

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create or permit, allow or assist others to create the source code of the Software or its structural framework; (ii) create derivative works of the Software; (iii) use the Software in whole or in part for any purpose except as expressly provided herein; or (iv) disable or circumvent any access control or related device, process or procedure established with respect to the Software. You acknowledge that you have access to sufficient information such that you do not need to reverse engineer the Software in any way to permit other products or information to interoperate with the Software. You are responsible for all use of the Software that is under your possession or control.

**10.3. Digital Assets.** Some Services and Software may allow you to create digital objects, such as avatars. Such digital objects, in addition to any digital or virtual objects or assets we assign to your Account, such as “Z”, virtual trophies or virtual goods, are collectively referred to as “Digital Assets”. You acknowledge that because all Digital Assets are created through the Software and/or Services, we solely and exclusively own all Digital Assets. To the extent we do not automatically own any Digital Asset, you hereby irrevocably, expressly and automatically assign to us, in perpetuity, all right, title and interest in and to any such Digital Assets, including, without limitation, all copyrights, patent rights, trade secrets, trademarks, moral rights and all other applicable proprietary and intellectual property rights throughout the world. If you have any rights to Digital Assets that cannot (as a matter of law) be assigned to us in accordance with the foregoing, you unconditionally and irrevocably: (i) waive the enforcement of such rights against us; and (ii) grant to us an exclusive, irrevocable, perpetual, worldwide, royalty-free license (a) to reproduce, create derivative works of, distribute, publicly perform,

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publicly display, digitally perform and otherwise use and exploit such Digital Assets, (b) to use, make, have made, sell, offer to sell, import and otherwise exploit any product or service based on, embodying, incorporating or derived from Digital Assets, and (c) to exercise any and all other present or future rights not yet known in Digital Assets. Subject to these Terms, we grant you a limited license to use Digital Assets through your own Account solely for purposes and in furtherance of your use of Services.

**10.4. Ownership.** All content of the Website, all Skillz products and services, all Skillz logos, symbols, expansion names and symbols, play level symbols, trade dress or “look and feel”, all Digital Assets and those portions of the Software and Services which are property of Skillz as well as all derivative works or modifications of any of the foregoing, and all related and underlying intellectual property (including without limitation patents, trademarks, trade secrets and copyrights), are our sole and exclusive property. We reserve all rights not expressly granted herein. Except as expressly set forth herein, no right or license is granted hereunder, express or implied or by way of estoppel, to any intellectual property rights and your use of Services and/or Software does not convey or imply the right to use the Services or Software in combination with any other information or products.

## 11. TERM AND TERMINATION

These Terms apply to you and to us from the date that you accept them as provided above, until termination of your Account (whether by deactivation, cancellation, closure,

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expiration or termination by you or us). You may terminate these Terms at any time and for any reason by going to your Account webpage and following the account closure process. Upon termination of your Account, you must immediately discontinue use of the Services and the Software and your Account and promptly uninstall and delete all copies of the Software. Immediately upon termination of your Account, all license and rights granted to you under these Terms automatically terminate and you shall automatically forfeit the right to use Digital Assets. Your obligation to pay accrued Fees will survive any termination of these Terms. Any and all terms and conditions within these Terms which should, by their nature, survive termination of these Terms, will survive such termination (including without limitation Sections 3.3, 4, 5, 6, 8.6, 8.7, 8.9, 8.10, 10.3 and 12 through 15 (inclusive)).

## **12. DISCLAIMERS**

In conjunction with our developer partners, we strive to keep Services up and running; however, all online services suffer occasional disruptions and outages, and we are not responsible or liable for any disruption or loss you may suffer as a result. You should regularly backup content that you store on the Services.

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ALL SERVICES, PRODUCTS, INFORMATION AND DATA PROVIDED OR MADE AVAILABLE BY US OR OUR DEVELOPER PARTNERS (INCLUDING WITHOUT LIMITATION DIGITAL ASSETS AND SOFTWARE) ARE "AS IS" AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT

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NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND YOU ASSUME THE ENTIRE RISK WITH RESPECT THERETO. WE MAKE NO REPRESENTATION, WARRANTY OR GUARANTEE THAT SERVICES, YOUR ACCOUNT, SOFTWARE, THE WEBSITE AND/OR DIGITAL ASSETS WILL BE SECURE, VIRUS-FREE, UNINTERRUPTED OR ERROR-FREE, OR THAT THE SAME WILL FUNCTION PROPERLY IN COMBINATION WITH ANY THIRD PARTY COMPONENT, TECHNOLOGY, HARDWARE, SOFTWARE OR SYSTEM.

We are not responsible or liable for any damage, loss or injury resulting from, relating to or arising out of (1) use, access or attempted use or access of Services, Digital Assets, the Software or the Website; (2) downloading any information from the Software, Services or Website; and/or (3) violations of these Terms by other users. We have no responsibility to enforce these terms for the benefit of any user.

Some states do not allow the disclaimer of implied warranties; as such the foregoing disclaimer may not apply to you in its entirety.

### **13. LIMITATIONS OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER WE, NOR OUR DEVELOPER PARTNERS, SUPPLIERS OR LICENSORS, WILL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST DATA OR LOSS OF GOODWILL) OR INCIDENTAL

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DAMAGES, ARISING OUT OF OR RELATING TO THESE TERMS, THE WEBSITE OR ANY INFORMATION, SERVICES, PRODUCTS OR SOFTWARE MADE AVAILABLE OR ACCESSIBLE TO YOU, WHETHER BASED ON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, INDEMNITY OR CONTRIBUTION OR OTHERWISE, EVEN IF WE OR OUR DEVELOPER PARTNERS, THIRD PARTY SUPPLIERS OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, OUR MAXIMUM LIABILITY TO YOU ARISING OUT OF OR IN ANY WAY CONNECTED TO THESE TERMS SHALL NOT EXCEED U.S. \$50.00. THE EXISTENCE OF ONE OR MORE CLAIMS BY YOU WILL NOT INCREASE OUR LIABILITY. IN NO EVENT SHALL OUR DEVELOPER PARTNERS, SUPPLIERS OR LICENSORS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO OUR PRODUCTS, INFORMATION OR SERVICES.

Certain jurisdictions do not allow limitations of liability for incidental, consequential or certain other types of damages; as such, the limitations and exclusions set forth in this Section may not apply to you.

## **14. DISPUTE RESOLUTION AND ARBITRATION**

**14.1. General.** This Section applies to any Dispute except for Disputes relating to the enforcement or validity of our intellectual property rights. The term “Dispute” means any dispute, action or

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other controversy between you and us concerning these Terms, the Services or any product, service or information we make available to you, whether in contract, warranty, tort, statute, regulation, ordinance or any other legal or equitable basis. “Dispute” will be given the broadest possible meaning allowable under law. In the event of a Dispute, you or we must give the other a Notice of Dispute, which is a written statement that sets forth the name, address and contact information of the party giving it, the facts giving rise to the Dispute, and the relief requested. You must send any Notice of Dispute by U.S. Mail to Skillz Customer Support, 1061 Market Street, 6th Floor, San Francisco, CA 94103. We will send any Notice of Dispute to you by U.S. Mail to your address if we have it, or otherwise to your email address. You and we will attempt to resolve any Dispute through informal negotiation within sixty (60) days from the date the Notice of Dispute is sent. After sixty (60) days, either you or we may commence arbitration. You may also litigate any Dispute in small claims court in your county of residence or San Francisco, California, if the Dispute meets all requirements to be heard in the small claims court. You may litigate in small claims court whether or not you negotiated informally first.

**14.2. Binding arbitration.** If you and we do not resolve any Dispute by informal negotiation or in small claims court, any other effort to resolve the Dispute will be conducted exclusively by binding arbitration as described in this Section. Instead, all Disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the Federal Arbitration Act. Any court with jurisdiction over the parties may enforce the arbitrator’s award.

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**14.3. Class action waiver.** To the maximum extent permitted under applicable law, any proceedings to resolve or litigate any Dispute in any forum will be conducted solely on an individual basis. Neither you nor we will seek to have any Dispute heard as a class action or in any other proceeding in which either party acts or proposes to act in a representative capacity. No arbitration or proceeding will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings. If this waiver is found to be illegal or unenforceable as to all or some parts of a Dispute, then it won't apply to those parts. Instead, those parts will be severed and proceed in a court of law, with the remaining parts proceeding in arbitration.

**14.4. Arbitration procedure.** If you are located within the United States, Canada, the United Kingdom or the European Union, or any of their territories, then any arbitration will be conducted by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules. You and we each agree to commence arbitration only in San Francisco, California, USA. You may request a telephonic or in-person hearing by following the AAA rules. In a Dispute involving \$10,000 or less, any hearing will be telephonic unless the arbitrator finds good cause to hold an in-person hearing instead. If you are located in a country other than listed above, then arbitration will be conducted by the International Court of Arbitration of the International Chamber of Commerce (ICC) pursuant to UNCITRAL rules, and the arbitration shall be conducted in English and the English version of these Terms (and not any translation) shall control, and both parties hereby agree to accord this arbitration agreement the broadest scope admissible under applicable Laws, and that it shall be

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interpreted in a non-restrictive manner. The arbitrator may award the same damages to you individually as a court could. The arbitrator may award declaratory or injunctive relief only to you individually, and only to the extent required to satisfy your individual claim. These Terms govern to the extent they conflict with the arbitrators' commercial rules. The arbitrator may award compensatory damages, but shall NOT be authorized to award non-economic damages, such as for emotional distress, or pain and suffering or punitive or indirect, incidental or consequential damages. Each party shall bear its own attorneys' fees, cost and disbursements arising out of the arbitration, and shall pay an equal share of the fees and costs of the arbitrator and AAA; however, the arbitrator may award to the prevailing party reimbursement of its reasonable attorneys' fees and costs (including, for example, expert witness fees and travel expenses), and/or the fees and costs of the arbitrator. Within fifteen (15) calendar days after conclusion of the arbitration, the arbitrator shall issue a written award and a written statement of decision describing the material factual findings and conclusions on which the award is based, including the calculation of any damages awarded. Judgment on the award may be entered by any court of competent jurisdiction. The parties waive their right to commence any action or judicial proceeding in connection with a dispute hereunder, except for purposes of: (i) recognition and/or enforcement of the arbitration award or any other decision by the arbitral tribunal, (ii) obliging the other party to participate in the arbitration proceedings, (iii) requesting any type of conservative or interim measure in connection with the dispute prior to the constitution of the arbitral tribunal, (iv) requesting the appearance of witnesses and/or experts, and/or

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(v) requesting that any information and/or documentation discovery be complied with. By agreeing to this binding arbitration provision, you understand that you are waiving certain rights and protections which may otherwise be available if a claim or Dispute were determined by litigation in court, including, without limitation, the right to seek or obtain certain types of damages precluded by this arbitration provision, the right to a jury trial, certain rights of appeal, the right bring a claim as a class member in any purported class or representative proceeding, and the right to invoke formal rules of procedure and evidence.

**14.5. Claims or Disputes.** Must be filed within one year. To the extent permitted by applicable law, any claim or Dispute under these Terms must be filed within one year from the date of the cause of action. If a claim or dispute isn't filed within one year, it's permanently barred.

**14.6. Equitable Relief.** You agree that we would be irreparably damaged if these Terms were not specifically enforced. Therefore, in addition to any other remedy we may have at law, and notwithstanding our agreement to arbitrate Disputes, we are entitled without bond, other security, or proof of damages, to seek appropriate equitable remedies with respect to your violation of these Terms in any court of competent jurisdiction.

**14.7 Language of the Terms:** If we provide a translated version of these Terms, the User Terms of Service, the Developer Terms and Conditions of Service, the Affiliate Program Terms of Service, the Skillz Privacy Policy, or any other terms or policy, it is

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for informational purposes only. If the translated version means something different than the English version, then the English meaning will be the one that applies.

## **15. MISCELLANEOUS**

These Terms constitute the entire agreement between you and us pertaining to the subject matter hereof and supersede all prior or other arrangements, understandings, negotiations and discussions, whether oral or written. These Terms cannot be modified by you, and may only be modified by us as provided above. Our failure to require or enforce strict performance by you of any provision of these Terms or to exercise any right under them shall not be construed as a waiver or relinquishment of our right to assert or rely upon any such provision or right in that or any other instance. The provisions of these Terms are intended to be severable. If for any reason any provision of these Terms shall be held invalid or unenforceable in whole or in part by any court of competent jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such determination of invalidity or unenforceability without affecting the validity or enforceability thereof in any other manner or jurisdiction and without affecting the remaining provisions of the Terms, which shall continue to be in full force and effect. Section titles in these Terms are for reference only and have no legal effect. No right or remedy of ours shall be exclusive of any other, whether at law or in equity, including without limitation damages injunctive relief, attorneys' fees and expenses. We may assign these Terms, in whole or in part, at any time without notice to you. You may not

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assign these Terms or transfer any rights to use the Services or Software. You consent to our providing you notifications about the Services or information the law requires us to provide via email to the address that you specified when you created your Account. Notices emailed to you will be deemed given and received when the email is sent. If you do not consent to receive notices electronically, you must close your Account. These Terms are solely for your and our benefit, and not for the benefit of any other person, except for our successors and assigns. A printed version of these Terms and of any notice given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to these Terms to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

Please send any questions or comments (including all inquiries unrelated to copyright infringement) to: Skillz Customer Support, P.O. Box 445, San Francisco, CA 94104. Please print these Terms for your records.

## **DEVELOPER TERMS AND CONDITIONS OF SERVICE**

***Updated (February 12, 2019)***

Skillz is happy to be working with you. These Developer Terms of Service defines the relationship between SKILLZ, Inc. ("Skillz") and you, the person registering for developer services or the organization or entity that has authorized you to register for

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developer services (in either case, “Company”). By clicking “I Agreed and Accepted” at the end of this agreement, and in creating a developer account, Company agrees that (i) he, she, or it has read, understands, agrees, and accepts these Developer Terms of Service and agrees to be bound by these Terms of Service and all terms, policies and guidelines incorporated in the Terms of Service by reference (collectively, the “Agreement”); and (ii) if Company is an individual, is at least eighteen (18) years old. If Company does not agree to be bound by this Agreement, Company must not create a developer account nor use the Monetization Services (as defined below) in any way, and Company must check the button indicating non-acceptance. The Monetization Services are offered to Company conditioned on Company’s acceptance without modification of this Agreement. The date of Company’s acceptance of these Developer Terms and Conditions is the “Effective Date” of the Agreement.

Skillz may modify the Agreement at any time by posting such modifications to the Skillz website (<https://skillz.com/legal>) and Company’s account homepage. Modifications will be effective either upon such posting, or, if Skillz informs Company by email, when Skillz sends that email. Changes will not apply retroactively and generally will become effective 14 days after they are posted or, if emailed, at the time Skillz sends that email. If Company does not agree to any modified terms in the Agreement, Company must terminate this Agreement and stop using the Monetization Services.

## **BACKGROUND**

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Skillz designs and provides online, real-money, tournament-based competitions (“Competitions”) to developers who wish to enable users of their gaming applications to participate in such Competitions. Company has developed a game (“Game”) and wishes to modify such Game to enable the end users who register for such Game (“Users”) to participate in Competitions. Skillz is willing to license its software developer kit (together with all content thereof, and all updates, enhancements, modifications and derivative works thereof, including updates, upgrades or error corrections, the “SDK”) to Company to allow Company to modify its Game to enable Users to participate in Competitions, and to establish and maintain Competitions that are specific to the Game, all in accordance with this Agreement. Skillz and Company agree to the following:

## **1. MONETIZATION SERVICES**

**1.1. Services.** Upon deployment of the Modified Game (defined in Section 2) in a live production environment and subject to the terms and conditions of this Agreement, Skillz shall (i) establish and manage Competitions through its proprietary online, hosted monetization platform (“Monetization Platform”) by creating Game tournaments, facilitating User-entry into Competitions, managing and hosting User’s Competition accounts, collecting User entry fees, distributing User payouts, resolving User disputes pertaining to his/her participation in Competitions, and providing all tiers of customer support for User inquiries related to the Competitions (but not related to the Game) and (ii) provide Company with access to reporting data that details activity under

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such Competitions, including the number of tournaments played, User actions, and related revenue ("Competition Data") (provision of the Monetization Platform and the Competition Data are collectively referred to as "Monetization Services"). Skillz may modify, enhance, update or provide appropriate replacements for Monetization Services or any element thereof at any time, and remove functionalities or features of the Monetization Services at any time, and Skillz may suspend or stop providing Monetization Services altogether.

**1.2. SDK License.** Skillz grants to Company during the Term a limited, non-exclusive and non-transferable license to install, run and copy the SDK solely for the limited purpose of modifying the Game to allow Skillz to provide Monetization Services with respect to such Game. This license does not include the right to reproduce the SDK, the Monetization Platform or the Monetization Services, or to sublicense, resell, or distribute the foregoing. Company shall not allow any third party to access the Monetization Services. Company shall not itself and shall not allow any third party to (i) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas, user interface techniques or algorithms, file formats or programming or interoperability interfaces of the Monetization Services, the SDK or any portion thereof, (ii) remove any product identification, copyright or other notices, or (iii) modify the Monetization Services or the SDK or incorporate the Monetization Services or SDK into or with other software or services or make derivative works thereof, or (iv) take any action that would cause the Monetization Services or the SDK to be placed in the public domain. All rights not expressly granted to Company herein are expressly reserved by

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Skillz, and nothing in this Agreement will be deemed to grant, by implication or estoppel, a license under any of Skillz's or its licensor's existing or future rights in or to the SDK, Monetization Platform or Competition Data.

**1.3. Suspension.** Company may suspend its User's access to and/or participation in a Game's Competitions at any time in its sole discretion and upon notice to Skillz. Skillz may suspend or terminate provision of Monetization Services or part thereof (including without limitation provision of Competitions) at any time in its sole discretion upon notice to Company. Company may display Advertisements preceding, following, or during any virtual currency tournament-based competitions that do not include a real money entry fee. Skillz may immediately suspend Monetization Services or part thereof<sup>(b)(3)</sup> in the event that Company displays any content that promotes or references a third<sup>(b)(3)</sup> party product or service or any hyperlinked content (collectively, "Advertisements") preceding, immediately following, or during any Competition.

**1.4. Promotion.** Skillz and the entities that participate in Skillz's affiliate program ("Affiliates") may use Company's name, trademarks and logos solely for the purpose of indicating that Company is a client of Skillz in Skillz's and its Affiliates' advertising, marketing or other promotional materials, and Skillz and its Affiliates may identify the Company and the Game as part of Skillz's network.

**1.5. User Information.** As a condition to access to Competitions, each User shall be required to read and agree to the Competition terms of use provided by Skillz from time to time ("Terms of Use"). Skillz may suspend or terminate any User's access to a

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Competition, in Skillz's sole discretion. Skillz may collect and store personally identifiable information from Users in providing Monetization Services, in which case Skillz will comply with all applicable laws and its then-current privacy policy (see <https://skillz.com/privacy-policy>). Skillz may collect anonymous aggregated and/or statistical data reflecting Company's and Users' use of Monetization Services and may use such data for tracking, reporting and other activities in connection with Skillz's business. Skillz will not (i) sell personally identifiable User data to any third party, nor (ii) aggregate or present User data in a form or manner that would permit a third party to identify any individual's personal information or identify the data as associated with Company or the Game. Skillz will endeavor to resolve User disputes regarding participation in Competitions. If there is a dispute between Company and a User apart from Monetization Services, however, Skillz is under no obligation to become involved, and Company will manage such dispute or disagreement directly. Company will not make any claims against Skillz with respect to Company's User dealings.

**1.6. Exclusivity.** From the Effective Date through the later of either (i) the first anniversary of the Effective Date (even if such anniversary occurs after termination of this Agreement); or (ii) ninety (90) days after termination or expiration of this Agreement, Company shall not enter into any agreement with any third party that provides services similar to the Monetization Services or Monetization Platform, nor will Company offer to customers any in-Game competition functionality similar to the Monetization Services or Monetization Platform.

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## **2. COMPANY OBLIGATIONS AND RESTRICTIONS**

Company shall modify and upload the Game(s) through the SDK and [www.skillz.com/developers](http://www.skillz.com/developers) ("Modified Game"). Skillz may review each Modified Game and determine, in Skillz's sole discretion, if the Modified Game is eligible for the Monetization Services. Company represents and warrants that it owns or has all necessary rights to the Game and its content and components ("Content") in order to allow both parties to perform this Agreement. Company represents and warrants that the Game and Content shall not contain, or contain links to, content which is unlawful, libelous, defamatory, or contrary to public policy.

## **3. REVENUE SHARE**

Skillz shall pay Company fifty percent (50%) of Net Revenue as a monthly revenue share ("Revenue Share"), where "Net Revenue" means all amounts received by Skillz from Users participating in Competitions, less deductions for taxes and for all costs and expenses directly attributable to Competitions and Users within the Game, and for amounts owed to Affiliates. If the foregoing deductions exceed the corresponding Net Revenue in any given month, then Skillz will treat such loss as a cost, and will deduct this cost from subsequent Revenue Share payments. In no event must Company pay Skillz any amounts in respect of Net Revenue or the Revenue Share. For Revenue Share that exceeds two hundred fifty dollars (\$250) in any given calendar month, Skillz shall pay Company the Revenue Share within forty-five (45) days following the end of the calendar month in which the applicable

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Net Revenue was received. For Revenue Share that does not exceed two hundred fifty dollars (\$250) in any given calendar month, Skillz will accrue and hold such Revenue Share until the aggregate Revenue Share held exceeds two hundred fifty dollars (\$250), at which time Skillz will pay Company such Revenue Share in the next-occurring calendar month.

#### **4. COMPANY INFORMATION**

Company shall provide Skillz with access to Company's Game information and data to enable Skillz to perform Monetization Services. Company is responsible for ensuring all Game information is accurate, and acknowledges that Skillz may rely upon such information without investigation, and is not responsible for any inaccuracies therein, or for Skillz's reliance upon Company's instructions. Company shall notify Skillz immediately if Company receives complaints related to the Monetization Services. If any error results from incorrect input supplied by Company, Company shall be responsible for discovering and reporting such error to Skillz and supplying all information necessary to correct such error at the earliest possible time.

#### **5. CONFIDENTIAL INFORMATION**

"Confidential Information" means this Agreement, and all confidential or proprietary information disclosed by one party ("Disclosing Party") to the other party ("Receiving Party") hereunder, including information which is orally or visually

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disclosed to the Receiving Party. The Receiving Party shall: (a) not use any of the Disclosing Party's Confidential Information for any purpose except in performance of its rights and obligations hereunder; (b) disclose the Disclosing Party's Confidential Information only to its employees or contractors who need to know such information in order to carry out obligations hereunder, and certifies that such individuals have previously agreed, either as a condition to employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those of this Section; and (c) treat all of the Disclosing Party's Confidential Information with the same degree of care as it accords its own Confidential Information of a similar nature, but in no case less than reasonable care. The forgoing obligations shall continue for a period of five (5) years following termination of this Agreement. The Receiving Party shall have no obligation with respect to information of the Disclosing Party which (i) was rightfully in possession of or known to the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party as evidenced by the Receiving Party's contemporaneous written records; (ii) is, or subsequently becomes, legally and publicly available without breach of this Agreement or wrongful act by the Receiving Party; or (iii) is rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality. The Receiving Party may disclose the Disclosing Party's Confidential Information to the extent required by a valid order of a court or government agency having jurisdiction, provided that the Receiving Party provides prior written notice to the Disclosing Party of such obligation and the opportunity to

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oppose such disclosure. Upon written demand of the Disclosing Party, the Receiving Party shall cease using the Disclosing Party's Confidential Information and return the Confidential Information and all copies, notes or extracts thereof in the Receiving Party's possession to the Disclosing Party within seven (7) days of receipt of notice.

## **6. DISCLAIMER**

MONETIZATION SERVICES, COMPETITION DATA AND COMPETITIONS ARE MADE AVAILABLE "AS IS" AND WITHOUT WARRANTY. SKILLZ MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED WITH RESPECT TO ANY PRODUCTS, SERVICES, INFORMATION OR TECHNOLOGY PROVIDED OR MADE AVAILABLE HEREUNDER, INCLUDING WITHOUT LIMITATION, NETWORK FAILURES, THIRD-PARTY PRODUCTS AND SERVICES, SOFTWARE PROGRAMS, AND OUTPUT OR RESULTS OF THE MONETIZATION SERVICES. SKILLZ DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE, NOR DOES THE COMPANY MAKE ANY WARRANTY AS TO ANY RESULTS THAT MAY BE OBTAINED BY USE OF THE SERVICE. SKILLZ DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

Skillz is not responsible or liable for any damage, loss, or injury resulting from, relating to or arising out of (1) use, access, or attempted use or access of Services, Digital Assets, the Software or the Website; (2) downloading any information from the

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Software, Services or Website; and/or (3) violations of these Terms by other users. Skillz has no responsibility to enforce these terms for the benefit of any user.

Some states do not allow the disclaimer of implied warranties; as such the foregoing disclaimer may not apply to you in its entirety.

## **7. LIMITATIONS OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW: (1) SKILLZ'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE LESSER OF EITHER (A) THE FEES PAID AND PAYABLE BY SKILLZ TO COMPANY DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE COMPANY'S FIRST CAUSE OF ACTION ARISING HEREUNDER, or (B) \$1,000; AND (2) EXCEPT FOR DAMAGES CAUSED BY A BREACH OF SECTION 1.6 OR SECTION 5, for INFRINGEMENT OR MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, AND AMOUNTS OWED BY A PARTY PURSUANT TO ITS INDEMNIFICATION OBLIGATIONS IN SECTION 8, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA, LOSS OF USE, OR LOSS OF PROFITS), ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY WERE OTHERWISE FORESEEABLE.

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## 8. INDEMNIFICATION

**8.1. By Company.** Company shall defend, hold harmless and indemnify Skillz, its officers, directors, employees, agents, representatives and Affiliates from and against any and all third-party claims, actions, proceedings, and suits brought against any of the foregoing persons or entities, and pay all related third party liabilities, damages, judgments, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees and other litigation expenses) to the extent arising out of or relating to Company's breach of Section 1.6 and/or Content.

**8.2. By Skillz.** Skillz shall defend, indemnify, and hold Company, its officers, directors, employees, agents, representatives and Affiliates harmless from and against any and all third-party claims, actions, proceedings, and suits brought against any of the foregoing persons or entities, and pay all related third party liabilities, damages, judgments, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees and other litigation expenses) to the extent arising out of or relating to a third-party claim that the Monetization Platform or SDK infringes or misappropriate such third party intellectual property right. Skillz shall have no obligation under this Section with respect to any claim based upon (i) Content; (ii) modification of the SDK by Company; (iii) the combination, operation or use of the SDK with non-Skillz software program(s) or data; or (iii) use of the SDK or Monetization Platform other than in compliance with this

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Agreement. If any portion of the SDK or Monetization Platform, in the opinion of Skillz, is likely to or does become the subject of a claim of infringement or misappropriation, Skillz may, at its sole option and expense: (x) modify the SDK or Monetization Platform (as applicable) to be non-infringing, provided that such modification does not materially diminish the terms of usage of the Monetization Platform; (y) obtain for Company a right to continue using the SDK or Monetization Platform at no additional charge; or (z) terminate this Agreement upon notice to Company. This Section represents Skillz's sole liability, and Company's sole and exclusive remedy, regarding infringement or misappropriation of intellectual property rights.

**8.3. Process.** The indemnified party shall promptly notify the indemnifying party in writing of any claim covered by this Section. The indemnified party shall give the indemnifying party sole control over the defense and/or settlement of any such claim, except that the indemnifying party shall not agree to any settlement or compromise that (1) would require the indemnified party to make any payments, admit liability, or bear any obligations, or (2) does not include an unconditional release of the indemnified party, unless the indemnifying party obtains the indemnified party's prior written approval. The indemnified party shall give the indemnifying Party reasonable assistance and cooperation in such defense at the indemnifying party's expense.

**8.4. Other Claims.** If any U.S. governmental or regulatory agency, or any consumer resident within the U.S., brings any claim, suit or proceeding against Company alleging that the Monetization Platform (excluding the Game and Content) in the form provided by Skillz violates applicable laws, rules or regulations, then Skillz,

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at its own expense, shall defend (or at its option settle) such claim, suit or proceeding, and shall pay any final and non-appealable fine, penalty or judgment entered or settlement against the Company thereon; provided, however, that (a) Skillz shall not be responsible for any compromise or settlement made without its prior consent; and (b) Skillz shall have no such obligation unless Company gives Skillz prompt notice of the claim, the right to control and direct the investigation, preparation, defense and settlement of the claim, and full cooperation (at Skillz's expense), in any such investigation, preparation, defense and/or settlement.

## **9. TERM AND TERMINATION**

This Agreement shall have an initial term of one (1) year from the Effective Date ("Initial Term") and shall automatically renew for periods of six months thereafter (each a "Renewal Term", together with the Initial Term, the "Term") unless either party provides forty-five (45) days written notice of its intent to terminate the Agreement prior to the expiration of any Initial Term or Renewal Term, in which case this Agreement will terminate upon expiration of the then-current Initial Term or Renewal Term, as applicable. This Agreement may be terminated by either party's convenience upon thirty (30) days written notice from the other party. This Agreement may be terminated by a party if the other party materially breaches any provision hereof and does not cure such breach within thirty (30) days of receipt of notice describing such breach. Sections 1.6, 6, 7, 8, 9 and 10 and this sentence shall survive termination of this Agreement, as

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well as any other obligations of the parties that contemplate performance by a party following such termination. Termination of this Agreement shall automatically terminate all licenses granted in this Agreement. Upon termination of this Agreement, Company will return or destroy all materials regarding the Monetization Services and Monetization Platform in its possession or control, including deleting all references to Skillz on its website and in marketing materials.

## **10. MISCELLANEOUS**

Nothing in this Agreement shall be deemed to create a partnership or joint venture between the parties and neither Skillz nor Company shall hold itself out as the agent of the other, except as set forth in this Agreement. Neither party shall be liable to the other for delays or failures in performance resulting from causes beyond the reasonable control of that party. Any notice required or permitted to be given by either party under this Agreement shall be in writing and shall be personally delivered or sent by a reputable overnight mail service (e.g., Federal Express), or by prepaid first class mail (certified or registered). Notices to Skillz shall be sent to Skillz Inc., Corporation Service Company, 2710 Gateway Oaks Drive, Suite 150 N, Sacramento, CA 95833, and notices to Company shall be sent to the name and physical address provided on the account page of Company's profile or, if no physical address is submitted, then to the email address provided on the account page. Any amendment or other modification of any provision of this Agreement shall be effective only if in writing and signed by the parties. This

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Agreement shall be interpreted under the laws of the Commonwealth of Massachusetts without regard to conflict of laws principles dictating another states' laws. The United Nations Convention for the International Sale of Goods shall not apply to this Agreement. This Agreement may not be assigned by Company without the prior written consent by Skillz. This Agreement shall be binding on permitted successors and assigns. This Agreement and its Appendix constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral, regarding such subject matter. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument. All rights and remedies, whether conferred hereunder, or by any other instrument or law, unless otherwise expressly stated, will be cumulative and may be exercised singularly or concurrently. The failure of any party to enforce any of the provisions hereof will not be construed to be a waiver of the right of such party thereafter to enforce such provisions. If one or more provisions in this Agreement are ruled entirely or partly invalid or unenforceable by any court or governmental authority of competent jurisdiction, then the validity and enforceability of all provisions not ruled to be invalid or unenforceable shall remain unaffected. EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES IS A FUNDAMENTAL PART OF THE BASIS OF THE BARGAIN HEREUNDER. IF ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS

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OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH  
HEREIN SHALL REMAIN IN EFFECT TO THE MAXIMUM  
ALLOWED BY APPLICABLE LAW.

## **AFFILIATE PROGRAM TERMS OF SERVICE**

***Updated (June 24th, 2014)***

Skillz is happy to be working with you. These Affiliate Terms of Service define the relationship between SKILLZ, Inc. ("Skillz") and you, the person registering, on behalf of yourself or the organization or entity that has authorized you to register for the Affiliate program (in either case, "Affiliate") to exchange affiliate services and other valuable consideration with Skillz in accordance with these Terms of Service. By clicking "Agreed and Accepted" at the end of this agreement, and in creating an affiliate account, Affiliate agrees that (i) he, she, or it has read, understands, agrees, and accepts these Affiliate Terms of Service and agrees to be bound by these Terms of Service and all terms, policies and guidelines incorporated in these Terms of Service by reference (collectively, the "Agreement"); and (ii) if Affiliate is an individual, is at least eighteen (18) years old. If Affiliate does not agree to be bound by this Agreement, Affiliate must not create an affiliate account, and Affiliate must check the button indicating non-acceptance. The date of Affiliate's acceptance of these Affiliate Terms and Conditions is the "Effective Date" of the Agreement.

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Skillz may modify the Agreement at any time by posting such modifications to the Skillz affiliate website and/or Affiliate's account homepage. Modifications will be effective either upon such posting, or, if Skillz informs Affiliate by email, when Skillz sends that email. Affiliate's continued use of the Skillz affiliate website or Skillz Content (defined below) posted to Affiliate's account homepage after Skillz has posted a revised Agreement signifies Affiliate's acceptance of such revised Agreement. No amendment or modification of this Agreement will be binding unless in writing and signed by a Skillz duly authorized representative or posted to the Skillz affiliate website or Affiliate's account homepage by a Skillz duly authorized representative.

## **1. PURPOSE**

Skillz desires for Affiliate to actively promote and solicit consumer downloads of Skillz' suite of games (each a "Skillz Game" and collectively, the "Skillz Games") through Affiliate URLs in accordance with these Terms of Service.

## **2. DEFINITIONS**

"Competition" means a multiplayer competition managed by Skillz.

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“Net Revenue” means all Skillz Tournament entry fees received by Skillz from each Valid Referral that created its initial Skillz account within the preceding 12-month period, less deductions for taxes and expenses attributable to Competitions.

“Referral Fee” means the amount payable to Affiliate by Skillz based on the Commission Schedule set forth in Section 4.2 of these Terms of Service and shall equal a percentage of the Net Revenue of each Valid Referral.

“Skillz Content” means data, graphics, information, images, links and displays provided by Skillz to Affiliate in support of Affiliate’s activities hereunder, including without limitation trademarks, logos, service marks and brands. Skillz Content may include third party content provided by Skillz to Affiliate.

“Skillz Game” means any mobile game that includes one or more Skillz Tournaments. Skillz may change or discontinue any Skillz Game at any time, in its sole discretion.

“Skillz Tournament” means a Competition featuring a real money entry fee. Skillz may change or discontinue any Skillz Tournament at any time, in its sole discretion.

“User” means anyone who has registered for an account with Skillz, downloaded any software application from Skillz or participated in any Competition. Users are subject to the Skillz User Terms of Service and may have their account suspended or closed at any time.

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“Valid Referral” means a User that (i) downloads a Skillz Game directly through Affiliate’s Skillz Content link on an Affiliate URL (ii) creates a new Skillz account and (iii) enters a Skillz Tournament within thirty (30) days of the account creation.

### **3. APPOINTMENT AND AUTHORITY OF AFFILIATE**

**3.1. Appointment and License.** Subject to the terms and conditions of this Agreement, Skillz appoints Affiliate as a nonexclusive referral agent for Skillz Tournaments, and Affiliate hereby accepts such appointment. Affiliate’s sole authority will be to publicly display Skillz Content on Affiliate URLs and Skillz hereby grants Affiliate a limited, nonexclusive, non-transferable, non-sublicensable, royalty-free license to display Skillz Content as necessary to perform the foregoing during the term of this Agreement. Affiliate will use Skillz’ then-current names for Skillz Games and Skillz Tournaments (but will not represent or imply that it is Skillz or is a part of Skillz) and will not add to, delete from or modify any Skillz Content without Skillz’ written approval. Affiliate acknowledges and agrees that all of its use of Skillz Content, including all goodwill associated therewith, shall inure to the benefit of Skillz and its licensors. Skillz, on behalf of itself and its licensors, reserves all rights in and to its technology, Skillz Games, Skillz Content, Skillz Tournaments, and all related intellectual property rights, and except for the express limited license granted to Affiliate in this Section 3.1, Skillz does not grant Affiliate any right or license in and to any of the foregoing, whether by implication, estoppel or otherwise.

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**3.2. Limitations and Obligations.** Affiliate has no power or authority, express or implied, to make any commitment or incur any obligations on behalf of Skillz. Affiliate shall use reasonable and diligent efforts to actively promote and solicit consumer downloads of Skillz Games through Affiliate URLs on a continuing basis during the term of this Agreement, and shall comply with good business practices and all applicable laws and regulations, and shall conduct its business in a manner that will reflect favorably on the good name and reputation of Skillz and its products, and shall not make any representations, promises, warranties or guarantees with respect to Skillz products or services that are inconsistent with or supplemental to or greater than any representations and warranties published by Skillz. If Skillz, in its sole discretion, determines that Affiliate's display of Skillz Content on any given Affiliate URL may harm Skillz' or its partners' name or reputation, then Skillz may instruct Affiliate to remove such Skillz Content from such Affiliate URL, and Affiliate shall do so within 24 hours. Affiliate shall not, either individually or on behalf of or through any third party, directly or indirectly, solicit, divert or appropriate or attempt to solicit, divert or appropriate any of Skillz' game or tournament developers, publishers or partners for the purpose of competing with Skillz, or where such solicitation, diversion or appropriation could have the effect of reducing Skillz' relationship with such persons or entities.

## **4. REFERRAL FEES**

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**4.1. Referral Fee.** During the Term, Skillz will pay Affiliate a Referral Fee equal to (i) Net Revenue received by Skillz during the applicable calendar month, multiplied by (ii) the percentage set forth in the Commission Schedule below, as determined by the aggregate total of Net Revenue received during such calendar month.

**4.2. Commission Schedule.** The percentage used to calculate Referral Fees payable to Affiliate on a calendar month basis shall be based upon aggregate Net Revenue received during such calendar month as follows:

- **\$0-\$2000 25% Referral Fee**
- **\$2001 – \$5000 30% Referral Fee**
- **\$5001+ 35% Referral Fee**

**4.3. No Self-Play.** Referral Fees and Commission Schedule will not include any user accounts that Skillz determines in its sole discretion to have been created directly by Affiliate or otherwise created to falsely generate or enhance Net Revenue. As a member of the Program, Affiliate agrees to refrain from creating player accounts.

**4.4. Tracking and Reporting.** In order to calculate the Referral Fees, Skillz shall refer to Affiliate URLs used by Affiliate. Upon Affiliate's reasonable request, Skillz agrees to have good faith discussions as to any dispute with respect to its calculation of Referral Fees.

**4.5. Payment Terms.** Skillz will pay all Referral Fees on a monthly basis within thirty (30) days of the close of each calendar month ("Payment Due Date"). Skillz' payment of Referral

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Fees is subject to all applicable governmental regulations and rulings, including the withholding of any taxes required by law. Affiliate's sole source of compensation for rendering services pursuant to this Agreement is Referral Fees payable pursuant to this Section 4, and Affiliate has no right to receive any other compensation for services rendered hereunder or to receive reimbursement of any expenses or other costs incurred by Affiliate in connection therewith. Skillz will accrue and withhold referral fees until the total amount due is at least \$25.00.

**4.6. Taxes.** Affiliate is responsible for paying all taxes, tariffs, duties or assessments arising out of the transactions contemplated under this Agreement (except for taxes imposed on Skillz' income).

## **5. WARRANTIES**

Affiliate represents, warrants and covenants to Skillz as follows:

(i) Affiliate's execution and performance of this Agreement does and will not violate any judgment, writ, injunction, or order of any court, arbitrator, or governmental agency applicable to Affiliate, or conflict with, result in the breach of any provisions of or the termination of, or constitute a default under, any contractual or legal obligation or agreement to which Affiliate is a party or by which Affiliate or any of its assets or properties is or may be bound; (ii) Affiliate has the power and authority to execute, deliver, and perform its obligations under this Agreement in accordance with this Agreement; and (iii) Affiliate shall perform this Agreement only as specified hereunder, only for lawful purposes, conforming to all applicable laws and ethical business

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practices, and without knowingly violating any intellectual property, publicity, privacy, confidentiality, contractual or other right of any third party.

## **6. LIMITATIONS ON LIABILITY**

SKILLZ WILL NOT BE LIABLE TO AFFILIATE FOR ANY LOST PROFITS, LOST DATA, COST OF SUBSTITUTE PRODUCTS OR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES, HOWEVER CAUSED, AND WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER SKILLZ HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

SKILLZ' TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED REFERRAL FEES PAYABLE TO AFFILIATE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING AFFILIATES' CAUSE OF ACTION.

## **7. ACKNOWLEDGMENT**

Affiliate acknowledges that (i) it has no expectation and has received no assurances that any investment by Affiliate in the promotion of Skillz Games will be recovered, or that Affiliate will obtain any amount of profits under this Agreement; and (ii) it will not have or acquire by virtue of this Agreement any rights, proprietary or otherwise, in its promotion of Skillz Games, or in any goodwill created by its efforts hereunder. Affiliate acknowledges that the manner and notice of termination set forth in this Agreement is reasonable and that, upon termination,

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no payment or indemnity for loss of goodwill, loss of profit, investments made, or otherwise shall be due to Affiliate, except for Referral Fees payable in accordance with this Agreement.

## **8. CONFIDENTIALITY**

Affiliate acknowledges that by reason of its relationship to Skillz hereunder, Affiliate will have access to certain information and materials concerning Skillz' business, plans, customers, technology, services and products that is confidential or proprietary ("Confidential Information"). Affiliate shall not use Confidential Information in any way for its own account or the account of any third party other than to fulfill its obligations under this Agreement, nor disclose Confidential Information to any third party. Affiliate shall take every reasonable precaution to protect the confidentiality of such information, and shall protect Confidential Information with at least as much care as it protects its own most highly sensitive information.

## **9. TRADEMARKS**

At no time during or after the term of this Agreement shall Affiliate challenge or assist others to challenge Skillz' trademarks or trade names or the registration thereof or rights thereto, or attempt to register any such trademarks or trade names, or any trademarks, marks or trade names confusingly similar to those of Skillz'.

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## 10. TERM AND TERMINATION

**10.1. Term.** The term of this Agreement shall commence on the Effective Date and continue until terminated by either party as set forth in this Agreement (the “Term”).

**10.2. Mutual Termination Rights.** Each party may terminate this Agreement immediately upon delivery of written notice to the other party provided in accordance with Section 12 hereof.

**10.3. Effect of Termination.** The provisions of Sections 4, 5, 6, 8, 10.3, 11 and 12 will survive the termination or expiration of this Agreement for any reason. Upon termination of this Agreement, (i) Affiliate shall return or destroy, and promptly (and in any event within two business days) cease further use of, any and all Skillz Content and Confidential Information of Skillz, and (ii) Skillz shall continue to pay the Referral Fee for the remaining period of such obligation unless Affiliate has breached and not cured such breach of this Agreement as of the termination date or breaches this Section 10.3. All other rights and obligations of the parties will cease upon termination of this Agreement.

## 11. INDEMNITY

Affiliate will indemnify and hold harmless Skillz and its affiliates, licensors, employees, directors, officers, agents and customers from and against any and all claims, damages, losses, costs, liabilities and expenses, including without limitation attorneys’ fees, incurred by any of the foregoing persons or entities arising out of or relating to Affiliate’s performance and/or breach of this Agreement. ^

## 12. MISCELLANEOUS

The relationship of the parties is that of independent contractors, and nothing contained in this Agreement will be construed to give the other party the power to direct or control the day-to-day activities of the other party or its employees. No amendment or modification hereof will be valid or binding unless made in writing and signed by the duly authorized representatives of both parties. If any provision or provisions of this Agreement is held to be unenforceable, this Agreement will continue in full force and effect without said provision and will be interpreted to reflect the original intent of the parties. This Agreement will be governed by the laws of the Commonwealth of Massachusetts, without regard to its conflict of laws principles. The parties consent to the personal and exclusive jurisdiction of courts located in Boston, Massachusetts. Waiver by either party of a breach of any provision of this Agreement or the failure by either party to exercise any right hereunder will not operate or be construed as a waiver of any subsequent breach of that right or as a waiver of any other right. The Agreement and all rights and obligations hereunder are not assignable or transferable by Affiliate and any attempt to do so shall be void. Affiliate acknowledges that it has not been induced to enter into this Agreement by any representation or warranty not set forth in this Agreement. This Agreement constitutes the entire agreement and understanding of the parties and terminates and supersedes any and all prior agreements, arrangements and understandings, both oral and written, express or implied, between the parties hereto concerning the subject matter of this Agreement. Any notice

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required or permitted to be given by either party under this Agreement shall be in writing and shall be personally delivered or sent by a reputable overnight mail service (e.g., Federal Express), or by prepaid first class mail (certified or registered), or email if permitted below. Notices to Skillz shall be sent to Skillz Inc., Corporation Service Company, 2710 Gateway Oaks Drive, Suite 150 N, Sacramento, CA 95833, and notices to Affiliate shall be sent to the name and physical address provided on the account page of Affiliate's profile or to the email address provided on the Affiliate's account page.

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## **DEVELOPERS**

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[Game Developer Challenge](#)

[Documentation](#)

[Support](#)

## **PLAYERS**

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[Player FAQ](#)

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